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Congress of the United States

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MEMORANDUM

To: Members of the Subcommittee on National Security, Emerging
Threats, and International Relations

From: Christopher Shays
Chairman



Date: September 9, 2005

Subject: Briefing memo for September 13th Subcommittee hearing

Attached find the briefing memo required by Committee rules for the hearing on Tuesday, September 13, 2005 entitled, *Combating Terrorism: Visas Still Vulnerable*. The hearing will convene at 10:00 a.m. in room 2154 Rayburn House Office Building.

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September 9, 2005

MEMORANDUM

To: Members of the Subcommittee on National Security, Emerging Threats, and International Relations

From: Thomas Costa, Professional Staff 

Re: Briefing memo for the hearing *Combating Terrorism: Visas Still Vulnerable* scheduled for Tuesday, September 13, 2005 at 10:00 a.m. in room 2154 Rayburn House Office Building.

PURPOSE OF THE HEARING

To identify steps the Departments of State and Homeland Security have made since 2002 to address gaps and vulnerabilities in the visa process.

HEARING ISSUES

1. What have the Departments of State and Homeland Security done to address gaps and vulnerabilities in the visa process since 2002?
2. What gaps or vulnerabilities prevent use of the visa process as an antiterrorism tool?

BACKGROUND

The 19 terrorist hijackers of 9/11 were all issued visas. In October 2002, the Government Accountability Office (GAO) reported that visa operations were focused on keeping illegal immigrants and not terrorists out of the country. Since that time, the Departments of Homeland Security and State, as well as the Congress, have made several changes to strengthen the visa process, particularly as an antiterrorism tool.

The hearing will focus on a new GAO report concerning the visa process scheduled for release September 13, *Border Security: Strengthened Visa Process Would Benefit from Improvements in Staffing and Information Sharing* (GAO-05-859) (**Attachment 1**) and on a report released in July 2005, *Border Security: Actions Needed to Strengthen Management of Department of Homeland Security's Visa Security Program* (GAO-05-801). (**Attachment 2**)

2002 GAO Report and OIG Report

Prior to the attacks of September 11, 2001, the State Department encouraged and was pressured to facilitate legitimate travel. The Department primarily screened visa applicants to see if they intended to become illegal immigrants or were involved in the illegal drug trade, two categories into which none of the 9/11 terrorists fell. (**GAO-03-132NI**)

In the wake of September 11th, both GAO and the State Department Office of Inspector General (OIG) issued critical reports about the visa process.

In October 2002, GAO issued the first definitive report on the weaknesses of the visa process, *Border Security: Visa Process Should Be Strengthened as an Antiterrorism Tool* (GAO-03-132NI). That report made several recommendations that the Department of State in conjunction with other agencies:

- develop a clear policy on the priority attached to addressing the national security concerns through the visa process;
- develop more comprehensive, risk-based guidelines and standards on how consular officers should use the visa process as a screen against potential terrorists;

- fundamentally reassess staffing requirements for visa operations, and
- revamp and expand consular training. (**Attachment 3**)

The report also recommended the Assistant to the President for Homeland Security in conjunction with other agencies:

- establish a governmentwide policy on the level of evidence needed to deny a visa on terrorism grounds;
- reassess interagency headquarters security checks to verify that all are necessary and ensure their timely coordination among U.S. agencies;
- consider reassessing, on an interagency basis, visas issued before the implementation of new security checks for selected categories of applicants who may pose security risks;
- reexamine visa operations on a regular basis to ensure that they are effectively contributing to the national strategy for homeland security and that they appropriately anticipate and consider changes in the security environment, technology, and government organization; and
- ensure that law enforcement and intelligence agencies are promptly providing information to the State Department on persons who may pose a security risk and who, therefore, should not receive a visa. (**Attachment 3**)

In December 2002, the State OIG issued Memorandum Report ISP-I-03-26, *Review of Nonimmigrant Visa Issuance Policy and Procedures*. Similar to the GAO report, the OIG report made several recommendations, including the following:

- The Bureau of Consular Affairs, Office of Visa Services, should develop and implement a policy requiring each mission to create a personal appearance waiver program that is based on local conditions and approved by the chief of mission;
- The Department should create a model travel agent referral program that includes regular review of participating travel agencies and regular validation studies;

- The Bureau of Consular Affairs, Office of Visa Services, should develop standard operating procedures covering all aspects of the visa application process appropriate to different size missions;
- The Department should review the clearance procedures instituted since September 11 and determine which clearance requirements are providing improved security;
- All NIV [nonimmigrant visa] processing instructions should be issued in unclassified form so that they can be readily available in the visa section of every post;
- The Department regulations requiring the review of all nonimmigrant visa refusals and a percentage of nonimmigrant visa issuances should set forth procedures for doing so at posts where the executive office is directly responsible for such reviews;
- The Department should discontinue most junior officer rotational assignments that include one year in a consular section and instead assign each junior officer to a two-year consular tour;
- The Bureau of Human Resources should utilize all alternate staffing programs that are available, including hiring language-qualified employees on limited non-career appointments, to staff consular sections;
- The Department should establish procedures to ensure that only officers who have completed at least one consular assignment are assigned to a one-person consular section;
- The Department should assess and reallocated consular workloads worldwide, and, where missions do not have sufficient consular work to justify a full time consular position, to the extent possible, the work should be performed regionally;
- The Department should conduct a worldwide review to determine where regional consular positions, vested with supervisory responsibilities and mandated to visit each post quarterly, are appropriate and create the appropriate positions;
- The Department should require language training for consular positions, and all consular officers should be required to be able to communicate at least at the basic level;

- The Department should finalize and implement plans to adapt language training to serve better the needs of consular officers, including interviewing techniques;
- The Department should assign officers with appropriate Middle East languages and are knowledge to major visa-processing posts outside the Middle East;
- The Department should fund the development of interview training to implement plans to use expert outside specialists to train consular officers in identifying applicants who, in particular, are terrorists or who are otherwise untruthful, and expand the basic consular course to include this additional training. (**Attachment 4**)

Congressional Action

The 1952 Immigration and Nationality Act, PL 82-414, sets forth the basic structure of federal American immigration law, from visa issuance and consular policies to border security and citizenship requirements. (**Web Resource 1**) This legislation compiled and preempted state and local laws on immigrations.

In 2001, Congress passed the USA PATRIOT Act, PL 107-56, which among other sweeping changes enacted to combat terrorism, simplified the process by which border and consular officials could access FBI records on suspected terrorists. (**Web Resource 2**) The PATRIOT Act also directed the Attorney General and Secretaries of State and Transportation, to study the feasibility of a biometric program for verification of applicant identities.

In 2002, Congress passed the Enhanced Border Security and Visa Entry Reform Act, PL 107-173, and mandated the use of personal interviews of aliens from nations listed by the State Department as supporting terrorism. (**Web Resource 3**) The law also set out further instructions on how information could be shared between agencies, most notably the FBI and the visa issuance body, the Immigration and Naturalization Service (INS). PL 107-173 also imposed minimum training standards for consular officials who examined and interviewed potential visa recipients. Universities also were given stricter guidelines on student visa standards.

Also in 2002, Public Law 107-296 established the Department of Homeland Security (DHS). (**Web Resource 4**) The functions of the INS were

subsumed within the DHS, as were border security programs. DHS was given a number of methods to oversee immigration functions, and was required to share information across different departments and agencies. The Secretary of the DHS was given authority to set visa policies, given power over US consular officials, and allowed to assign DHS personnel to foreign embassies. Finally, the Secretary of the DHS was required to ensure that all consul officials were properly trained.

In 2004, Congress reformed the Intelligence Community with the passage of PL 108-458, the Intelligence Reform and Terrorism Prevention Act of 2004, which again determined that DHS needed to improve intelligence sharing with border services. (**Web Resource 5**) The Act also allowed the State Department to increase the number of consular officials and determined additional training of those officials was needed.

DISCUSSION OF HEARING ISSUES

1. What have the Departments of State and Homeland Security done to address gaps and vulnerabilities in the visa process since 2002?

Since the 2002 reports of both GAO and the State OIG, the Departments of State and Homeland Security have taken many steps to strengthen the use of the visa process as an antiterrorism tool.

First and foremost, the Assistant Secretary of State for Consular Affairs Maura Harty has changed the culture of consular officers, inculcating the importance of security as their top priority, while recognizing the importance of keeping business and travel lanes open. (**Attachment 1**) This has been done through training, changes to standard operating procedures, and an increase in management controls to standardize visa operations across the globe.

State has increased hiring of Foreign Service officers with appropriate language skills. State has also improved fraud prevention efforts in conjunction with the Bureau of Diplomatic Security. Furthermore, with the support of the Overseas Building Office, consular facilities around the world have been improved. (**Attachment 1**) Though many of these areas are still works in progress, the Department has demonstrated continued improvement in consular management and operations.

Along with increased access to watch lists and criminal databases, State has begun using biometrics, and requiring the electronic capture of two fingerprints for all visa applicants. This additional information about applicants has increased the ability of consular officers, the front-line of American security, to identify criminals and terrorists. (**Attachment 1**)

Missions overseas now run congressionally-mandated “Visas Viper” terrorist reporting committees, which include all embassy sections and agencies involved in security, law enforcement, and intelligence activities. These committees have increased information sharing and identification of possible criminals or terrorists. (**Attachment 1**)

In brief, the visa process now consists of the following several steps: (1) the applicant submits a visa application and schedules an interview with the post; (2) the application is reviewed, biometrics (fingerprints) are collected, and a name check against various watch lists is performed, including the Consular Lookout and Support System (CLASS); (3) the interview takes place and supporting documents are reviewed; (4) the consular officers reviews the name check results to see if a Security Advisory Opinion (SAO) is required; (5) if an SAO is required, it is submitted for interagency check and responded to; and (6) the visa is issued or denied. (**Attachment 1**)

2. What gaps or vulnerabilities prevent use of the visa process as an antiterrorism tool?

The Departments of State and Homeland Security have made numerous efforts toward strengthening the visa process as an effective antiterrorism tool. Nevertheless, the GAO is expected to address several gaps or vulnerabilities that need further attention.

According to GAO, the consular and visa chapters of the Foreign Affairs Manual (FAM) are not regularly updated. The FAM is the guidebook of all State Department procedures. It is available on the State Department intranet to all personnel. However, if the FAM is not updated, its use is minimized. With over 80 changes to standard operating procedures since 9/11 and additional security requirements – such as the mandatory interview of all visa applicants – taking up additional work time of consular officers, having an easily referenced FAM at the officers’ fingertips is crucial to both

ensuring security and the smooth operations of consular sections.
(Attachment 1)

Perhaps the greatest vulnerability is the lack of a worldwide staffing needs assessment for State visa operations as recommended by GAO in 2002. (Attachment 3). In a June 2002 report, *State Department: Staffing Shortfalls and Ineffective Assignment System Compromise Diplomatic Readiness at Hardship Posts* (GAO-02-626), GAO noted the Department was not using its ability to direct employees to specific posts, causing both a lack of senior officers and an overall shortfall at key strategic posts. (Web Resource 6) Despite former Secretary Colin Powell's Diplomatic Readiness Initiative to increase the number of Foreign Service officers, the Department has remained reluctant to send personnel where they are most needed. (Attachment 1)

GAO notes that

as of April 2005, 26 percent of mid- or supervisory level positions were either vacant or filled by entry-level officers, placing a large burden on these officers. During our February 2005 visits to posts in Riyadh and Jeddah, Saudi Arabia, and Cairo, Egypt, the visa sections were staffed with first-tour, entry-level officers, with no permanent, mid-level visa chiefs to provide guidance, support, and oversight. (Attachment 1, p. 3)

Moreover, consular workloads have gradually increased around the world. With additional security requirements, such as mandatory interviews and the taking of fingerprints, consular officers are facing a workload that exacerbates staffing shortages. State should take efforts now to identify strategic posts, including those that are both high workload and high risk, assign personnel to those posts, and better provide supervision to junior officers. (Attachment 1)

In addition, State has not collected reliable data to gauge their overall increased visa wait times and workloads. However, over a six month period, partial data shows 63 posts reported wait times of 30 or more days in at least one month of that period and 13 posts reported wait times of 30 or more days over the entire six month period. However, the Department still lacks data from all posts. (Attachment 1)

Another area that continues to need additional effort is information sharing. GAO found several cases where consular officer requests for formal briefings from law enforcement or intelligence personnel had not been filled or where communication between consular officers and security personnel was negligible. (**Attachment 1**)

Consular officer access to the FBI criminal database, NCIC, is minimal and also needs improvement. Officers are able to learn if there is a name “hit,” but little more. This lack of timely and direct access to detailed criminal records requires the consular officer to request an FBI check for what often results in a case where no charge was brought or that involves an admissible offense for purposes of a visa adjudication, such as a traffic violation. This slows the visa process unnecessarily. (**Attachment 1**) State Department personnel all have security clearances and should be trusted with greater access to the possibly sensitive law enforcement information in the NCIC database. As GAO points out, however, this is a matter that requires a change in the law.

Interagency protocols, particular with DHS and its component agencies, also need clarifying. DHS personnel overseas work on a variety of security and immigration issues. Most serve in a regional capacity assisting multiple posts. According to GAO, DHS has not provided guidance to the Department of State on the responsibilities of its staff. Moreover, many DHS staff are not clear about some of their own responsibilities, particularly as they involve the visa process. (**Attachment 1**) Better information sharing is key to the success of the visa operation. Relying on a patchwork of *ad hoc* procedures developed through personal relationships will lead to gaps that threaten many of the security measures put in place by both State and DHS.

The 2002 Homeland Security Act authorized DHS to post visa security officers (VSOs) at missions overseas. It also mandated their presence in Saudia Arabia. To date, DHS has only posted VSOs in Saudia Arabia. These VSOs are required to review all visa applications. However, DHS has not collected comprehensive data on what the VSOs do or the value added by these personnel. This lack of information has complicated the deployment of additional VSOs. DHS has been unable to articulate why they wish to send VSOs to certain posts, and this has led chiefs of mission – who often lack additional office space and are charged with the security of all personnel under their authority – to use their National Security Decision

Directive (NSDD) 38 authority to delay DHS requests. (**Attachment 2**) While GAO argues there is value added by VSOs, without supporting data to develop a comprehensive plan for their deployment, DHS will continue to have a difficult time placing them overseas.

WITNESS TESTIMONY

Witnesses were told the hearing will focus on a new GAO report concerning the visa process, *Border Security: Strengthened Visa Process Would Benefit from Improvements in Staffing and Information Sharing* (GAO-05-859) (**Attachment 1**). The Subcommittee asked witnesses to address the progress the Departments of State and Homeland Security and other agencies have made since 2002. Specifically, witnesses were asked to address changes in visa policy and guidance; consular resources, including staffing, training, and supervision; the extent to which U.S. agencies share information with visa adjudicators; work load and wait times for non-immigrant visas; and the role of visa security units.

Mr. Jess Ford is expected to discuss the new GAO report, *Border Security: Strengthened Visa Process Would Benefit from Improvements in Staffing and Information Sharing* (GAO-05-859). In particular, Mr. Ford is expected to focus his remarks on concerns over staffing issues within the Bureau of Consular Affairs and the lack of sufficient planning on the part of the DHS with its visa security units.

Ambassador John Lange is expected to discuss the long-term OIG oversight of visa processes and the results of past inspections.

Mr. Tony Edson was asked to discuss changes the State Department has made to the visa process and current challenges.

Ms. Elaine Dezenski was asked to discuss the role of the DHS in setting visa policy, interface with the Department of State, and the status of visa security units.

Mr. Clark Ervin, former Inspector General for both the Departments of State and Homeland Security, was asked to bring his unique perspective to discuss how the agencies work together and ongoing challenges in the visa process.

Dr. James Carafano is expected to discuss ongoing weaknesses in the visa process and areas in need of reform.

Ms. Susan Ginsberg, former Senior Counsel to the 9/11 Commission, is expected to discuss the use of the visa process as a counterterrorism tool and ideas for strengthening that process.

Mr. Dan Morris, former Consul General to the U.S. Embassy in Beijing, China, was asked to discuss his experiences as consul general, head of the consular section at a large post with a high and increasing caseload and high security concerns.

WITNESSES

PANEL ONE

Mr. Jess T. Ford

Director, International Affairs and Trade Division
U.S. General Accounting Office

Ambassador John E. Lange

Deputy Inspector General
U.S. Department of State

Mr. Tony Edson

Acting Deputy Assistant Secretary for Visa Services
Bureau of Consular Affairs
U.S. Department of State

Ms. Elaine Dezenski

Acting Deputy Assistant Secretary for Policy
Border and Transportation Security
U.S. Department of Homeland Security

PANEL TWO

The Honorable Clark Kent Ervin

Director, Homeland Security Initiative
Aspen Institute

Dr. James Jay Carafano

Senior Fellow
The Heritage Foundation

Ms. Susan Ginsberg

Former Senior Counsel
National Commission on Terrorist Attacks Upon the United States (“9/11
Commission”)

Mr. John Daniel Morris

Retired Consul General
U.S. Mission to Beijing, China

ATTACHMENTS

1. Draft copy of *Border Security: Strengthened Visa Process Would Benefit from Improvements in Staffing and Information Sharing*, United States Government Accountability Office, GAO-05-859, September 13, 2005.
2. *Border Security: Actions Needed to Strengthen Management of Department of Homeland Security's Visa Security Program*, United States Government Accountability Office, GAO-05-801, July 29, 2005.
3. *Border Security: Visa Process Should Be Strengthened as an Antiterrorism Tool*, United States Government Accountability Office, GAO-03-132NI, October 2002.
4. Redacted copy of *Review of Nonimmigrant Visa Issuance Policy and Procedures*, U.S. Department of State Office of Inspector General, Memorandum Report ISP-I-03-26, December 2002.

WEB RESOURCES

1. The Immigration and Nationality Act (P.L. 82-414; 8 U.S.C. Sec. 1101 et seq.) <http://uscode.house.gov/usc.htm>.
2. The USA PATRIOT Act (PL 107-56)
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ056.107.
3. The Enhanced Border Security and Visa Entry Reform Act (PL 107-173)
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ173.107.
4. The Homeland Security Act (P.L. 107-296)
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ173.107.
5. The Intelligence Reform and Terrorism Prevention Act (P.L. 108-458)
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ173.107.

6. *State Department: Staffing Shortfalls and Ineffective Assignment System Compromise Diplomatic Readiness at Hardship Posts*, United States Government Accountability Office, GAO-02-626, June 18, 2002, <http://www.gao.gov/new.items/d02626.pdf>.